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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1979

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No. 79-259

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AMF INCORPORATED,  
*Petitioner*

*v.*

GENERAL MOTORS CORPORATION, *et al.*

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SUPPLEMENTAL APPENDIX TO PETITION  
FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR  
THE NINTH CIRCUIT

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TABLE OF CONTENTS

	<u>Page</u>
SUPPLEMENTAL APPENDIX:	
Findings of Fact and Conclusions of Law of the United States District Court, Central District of California (February 18, 1976) . . . . .	1b
Order Granting Summary Judgment (February 18, 1976) . . . . .	32b

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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M.D.L. Docket No. 31  
Civil No. 71-16-R

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[Filed: Feb. 18, 1976]

*IN RE:*  
MULTIDISTRICT VEHICLE AIR POLLUTION

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AMF INCORPORATED,  
*Plaintiff,*

*v.*

GENERAL MOTORS CORPORATION, *et al.,*  
*Defendants.*

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FINDINGS OF FACT AND CONCLUSIONS  
OF LAW RELATING TO ALL DEFENDANTS  
AND SEPARATE FINDINGS OF FACT  
RELATING TO CHRYSLER CORPORATION

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The motions of defendants other than Chrysler for summary judgment and the motion of Chrysler for summary judgment having been duly heard upon the pleadings, depositions, documents, memoranda, affidavits and oral argument herein, the Court hereby finds the following facts and reaches the following conclusions of law:

## I.

## PRELIMINARY

1. In this lawsuit, AMF alleges that the defendant vehicle manufacturers conspired to boycott a direct flame afterburner motor vehicle exhaust emission control device partially developed by AMF in cooperation with and under licenses from the inventor, Charles Morris, and the Chromalloy Corporation. AMF also alleges that defendants conspired and attempted to monopolize a market defined as "air pollution control equipment" for motor vehicles, and that defendant General Motors in fact monopolized a market defined as "air pollution control equipment."

2. As a result of the claimed violations, AMF alleges, it lost profits that it otherwise would have earned.

3. Initially, AMF requested that this case remain on the back burner while related city and state cases in M.D.L. Docket No. 31 were litigated.

4. AMF directly participated in the discovery in those cases, however, and after those cases were dismissed by this Court in November 1973, AMF was permitted to conduct further discovery in connection with its case.

5. During this same period, defendants were for the first time provided the opportunity to depose present and former AMF employees.

6. Over one hundred depositions have been taken of knowledgeable scientists, engineers, and executives.

7. This discovery is now complete, the record is adequate for summary judgment and there is no disputed issue of material fact to prevent the entry of judgment for defendants.

## II.

DEFENDANTS' EMISSION CONTROL  
ACTIVITIES

8. In the early 1950's, in response to research implicating motor vehicles in the formation of Los Angeles' photochemical smog, vehicle manufacturers entered into research related to motor vehicle emissions. In the course of this research, vehicle manufacturers conducted emission research into the development of new and improved instrumentation and measurement techniques; the physical and chemical nature of photochemical smog and vehicle emissions; and the development and testing of emission control devices, including deceleration devices, crankcase ventilation devices, catalytic converters, direct flame afterburners, engine modifications, exhaust manifold air injection, and other systems.

9. During the course of this research, vehicle manufacturers worked with and assisted non-vehicle manufacturers in the development of emission controls. Non-vehicle manufacturers also had access to the Los Angeles County Air Pollution Control District and the California Motor Vehicle Pollution Control Board for approval of devices.

10. Subsequent to the discovery that motor vehicles contributed to Los Angeles' photochemical smog, and in response to requests for the Director of the Los Angeles County Air Pollution Control District, vehicle manufacturers also entered into cooperative activities related to motor vehicle emissions. These activities consisted of exchanging technical information on motor vehicle research and controls pursuant to a cross-licensing agreement. These activities also consisted of the presentation and advocacy of industry viewpoints to legislative and regulatory authorities.

11. These activities were carried out under the auspices of the Automobile Manufacturers Association, ("AMA", now defendant Motor Vehicle Manufacturers Association of the United States, Inc.), through technical committees of the Association. These technical committees were composed of engineers and scientists employed by vehicle manufacturers.

### III.

#### CALIFORNIA EMISSION REGULATIONS

12. In 1959, at the direction of the California Legislature, the California Department of Public Health promulgated standards for motor vehicle exhaust emissions. Four months later the Legislature created the Motor Vehicle Pollution Control Board, for the purpose of testing control devices for compliance with those standards. Under the law, when two devices were certified by the Motor Vehicle Pollution Control Board as being in compliance with the standards, subsequent to one model year thereafter all new cars sold in the State had to be certified as being in compliance with those same standards.

13. Vehicle manufacturers assisted the Motor Vehicle Pollution Control Board in setting up test procedures for exhaust control devices submitted by companies desirous of certification.

14. Between 1961 and 1964 forty-three (43) applications for certification of exhaust control devices were submitted to the California Board.

15. After the Board relaxed its standards to permit averaging of test results over the required 12,000-mile durability run, the Board certified four exhaust control devices in June, 1964. Three of these were catalytic

mufflers that were certified for new cars only. The fourth was a prototype direct flame afterburner invented by Charles Morris and further developed by the Chromalloy Corporation and AMF. This device was conditionally certified for new vehicles and for post-1962 model used vehicles.

16. Under California law, certification of these devices meant that new 1966 model vehicles sold in California would have to be certified as being in compliance with California's exhaust emission standards.

### IV.

#### THE AMF DEVICE

17. The AMF device certified by the California Board was an experimental prototype. It was not intended for use on production vehicles.

18. AMF applied for certification of the certified device in December, 1963.

19. At the time of certification, in June 1964, the California Board Staff Report on the AMF device stated in part as follows:

"The system complies with the Board's criteria with the following exceptions:

a. Adequate service life data beyond 12,000 miles are as yet lacking, nor has a specific warranty been finalized;

b. Comprehensive device servicing plans of the applicant beyond one year, in order that adequate performance, commensurate with the test data, be ensured, are as yet lacking. . . ."

20. For these reasons, the Board Staff Report on the AMF device stated:



"3. Affirmative action by the Board for factory installation approval implies heavy reliance on the applicant and the automobile manufacturer who utilizes the device, to scale up production of it, to correct slight malfunctions in it, and to adapt it to the variety of vehicle model options involved, without sacrificing its performance or durability.

"4. A device Servicing System which ensures proper annual maintenance of the control system is absolutely essential before the contribution of this device to reducing vehicular pollution will correspond to the emission reductions claimed for the device."

21. The Board Staff Report on the AMF device also stated that during "on the road" testing the AMF device emitted 48% more hydrocarbons and 60% more carbon monoxide than during the 7-mode dynamometer tests used for certification purposes. The Report further stated that "these differences are viewed by the staff as amounting to a substantial adverse discrepancy."

22. In September, 1965, at the beginning of the 1966 model year, the California Legislature refused to grant to the California Board the authority to enforce the compulsory maintenance that the Board believed was necessary for performance of the four devices certified in June, 1964. For that reason, the Board decertified these devices, including the AMF device.

23. This decertification made use of the AMF device illegal under California law.

24. The AMF device that was certified and then decertified by the California Board was not the device that AMF intended to sell to the defendants.

25. The AMF certification device was approximately three feet long and incorporated a muffler, while the device that AMF intended to sell to vehicle manufacturers was smaller and of different configuration, with a smaller combustion chamber, shorter heat exchanger tubes, a different ignition system, and shorter internal parts.

26. No AMF production device was ever submitted to or certified by the California Board.

27. Even if the smaller device that AMF intended to sell to defendants was similar in principle to the certified device, the California Board had a specific formal procedure that AMF would have had to follow in order to obtain certification for that smaller device.

28. AMF never complied or attempted to comply with that procedure.

29. Use of any AMF production device on motor vehicles in California would therefore have been illegal.

## V.

### THE NON-EXISTENCE OF ANY AMF PRODUCTION DEVICE

30. The version of the AMF device temporarily certified by the California Board was approximately 28.5 inches long, incorporated a muffler as an integral part of the assembly, and had a heat exchanger consisting of 12 round tubes. The first proposed AMF production device was only 14.5 inches long, did not incorporate a muffler, and had 32 relatively flat tubes in the heat exchanger.

31. Testing of this proposed production device by AMF demonstrated that the heat exchanger tubes were subject to warping.

32. AMF therefore abandoned this design and submitted to vehicle manufacturers new envelope drawings describing two different versions of production devices that it proposed to sell. One of these, the Mark XII(Y), was 17.3 inches long, 9.5 inches wide, and 4 inches thick. The other, the Mark XII(Z), was 15.8 inches long, 7.5 inches wide, and 4 inches thick.

33. Hardware samples of these devices were never built by AMF. Instead, defendants were furnished samples of the certified AMF experimental unit.

34. In September, 1964, AMF proposed another new production device, known as the SK 6000. The dimensions of that device were to be 20.2 inches long, 9 inches wide, and 3.12 inches thick.

35. Despite requests made by vehicle manufacturers for samples of AMF production devices, AMF never furnished samples of any production device to Ford, General Motors, or Chrysler.

36. When samples of the SK 6000 production device were furnished to American Motors in September and October of 1964, performance was poor. One of the reasons was because the reduced size caused problems in the burner "lighting."

37. By this time, General Motors, Ford, and Chrysler had already decided to use control systems other than AMF's.

38. American Motors rejected AMF very shortly—within three weeks—thereafter.

39. There was no AMF production device in existence at that time.

40. At that time AMF had a concept, not a device.

## VI.

### THE AMF DEVICE AND VEHICLE MANUFACTURERS

41. Despite requests from vehicle manufacturers, AMF refused to provide any sample AMF hardware for testing by vehicle manufacturers until just prior to certification by the California Board in June, 1964.

42. In June and July 1964 AMF provided defendant vehicle manufacturers with samples of its certified device. At that time, AMF displayed to defendant vehicle manufacturers an empty shell represented by AMF as being intended to convey the outside configuration of the projected production device.

#### 1. General Motors

43. During the 1950's and 1960's, years before AMF entered into its joint venture with Chromalloy, the General Motors Research Laboratories built and tested experimental afterburners. From this research, General Motors concluded that direct flame afterburners were not very promising as exhaust emission controls.

44. More promising than afterburners, in the view of General Motors engineers, was the concept of exhaust manifold air injection, upon which General Motors began working in 1959.

45. In March, 1962, General Motors engineers published an SAE paper describing work on air injection.

46. In February, 1964, four months prior to the first submission of sample afterburner hardware by AMF to General Motors, General Motors management decreed that air injection was to be the system utilized by General Motors in meeting the California standards.

47. At the same time, General Motors management further instructed the General Motors car divisions that they were to set a design objective for introduction of that system by the 1966 model year.

48. At that time, AMF had not yet submitted an afterburner sample for evaluation by General Motors. Although General Motors had been requesting such a sample for years, AMF continued to refuse to provide one until just prior to certification by the California Board in June, 1964.

49. As a result, General Motors was already committed to air injection when AMF finally submitted an experimental afterburner prototype for evaluation in June, 1964.

50. General Motors tested the experimental prototypes that AMF finally submitted, and its engineers concluded that performance of the AMF device was unsatisfactory.

51. In the course of this testing, General Motors engineers discovered that AMF's afterburner ignition system adversely affected the vehicle engine ignition. In order to overcome this problem, the Delco-Remy division of General Motors designed, built, and installed a new afterburner ignition system.

52. General Motors' engineers advised AMF of their solution of the engine ignition problem.

53. The AMF device tested by General Motors was the experimental prototype certified by California in June, 1964. General Motors requested that AMF provide samples of the AMF intended production device, but AMF never provided any.

## 2. Chrysler

54. Prior to 1964, in the course of work on afterburners, Chrysler developed afterburner designs of its own, and cooperated in research and testing with others.

55. Chrysler's efforts covered a number of different afterburner designs, including one which combined afterburner features with those of catalytic converters, and Chrysler worked with several outside suppliers on such designs.

56. In spite of its efforts, Chrysler did not overcome the problems it believed to be inherent in direct flame afterburners. As early as 1961 Chrysler became discouraged with afterburners.

57. After certification of the AMF prototype by the California Board, sample AMF prototype certification units were supplied to Chrysler for test.

58. By that time, Chrysler had submitted its "Cleaner Air Package" of engine modifications to the California Board for certification, and Chrysler was fully committed to that package.

59. Chrysler engineers tested the AMF experimental device and concluded that it was unsatisfactory on Chrysler vehicles.

60. In November of 1964 AMF withdrew its units from Chrysler for further work by AMF. AMF never furnished any further samples to Chrysler. Despite requests by Chrysler, AMF never furnished a production unit to Chrysler for test.

## 3. Ford

61. By March, 1962, Ford engineers had come to believe that the air injection concept was more promising



than either catalytic converters or direct flame afterburners, and they published that conclusion in a March 1962 SAE paper.

62. Prior to 1964, Ford requested that AMF submit a sample afterburner to it for test, but AMF refused. Not until June, 1964, three months after Ford management directed that the Company be prepared to meet the California exhaust requirements by the beginning of the 1966 model year, did AMF submit sample afterburners to Ford.

63. By then, Ford engineers concluded that air injection would be the preferred system in complying with their management's directive, based on a 40-car test fleet that Ford had set up in February 1964.

64. Subsequently, sample AMF afterburners were furnished for installation on three Ford vehicles. These prototype afterburners were of the type conditionally certified by California.

65. Ford requested samples of the smaller so-called "production" device, but AMF never furnished any.

66. Ford engineers tested the device submitted by AMF and concluded that air injection was a preferable approach.

67. On July 23, 1964, the Ford engineering staff recommended that Ford's 1966 models use the air injection approach to control emissions.

68. Contemporaneous Ford documents in July and early August 1964 state that Ford's choice of emission control in order of preference was as follows:

1. Air injection;
2. Engine modifications;

3. Walker Manufacturing's catalytic converter;

4. The AMF direct flame afterburner.

69. By August 12, 1964, Ford decided that air injection was to be the Ford approach and shortly thereafter Ford returned the AMF certification models to AMF.

#### 4. American Motors

70. American Motors first requested a sample of the AMF afterburner for evaluation and testing in November 1962. AMF responded that it was deferring submitting units to any vehicle manufacturer until an improved prototype could be developed.

71. AMF promised to contact American Motors with an improved prototype by the beginning of 1963, but AMF did not in fact make a device available for testing by American Motors until May 1964. The device provided by AMF at that time was the experimental type certified by the California Board.

72. At that time, AMF represented that the AMF device was essentially ready for production, and American Motors engineers, impressed with the unit and with AMF's presentation, ordered samples.

73. At this time, American Motors' engineers were hopeful that the AMF device would prove to be a solution to at least some of American Motors' emission problems.

74. As a result of tests on devices furnished by AMF, American Motors' engineers concluded that the AMF afterburner was not satisfactory on American Motors cars.

75. In September and October of 1964, AMF furnished samples of a production type of AMF device to American Motors, but performance of these samples was poor. These were the last samples furnished by AMF to any of the defendants.

#### 5. Motor Vehicle Manufacturers Association

76. The defendant Motor Vehicle Manufacturers Association does not purchase or manufacture emission control devices, nor does it manufacture motor vehicles. There was no agreement, conspiracy or concert of action between MVMA and any manufacturer defendant concerning the use of third-party devices or concerning AMF's device.

#### 6. Other Vehicle Manufacturers

77. An AMF production prototype burned a hole in the floor mat and rear seat of an International Harvester test vehicle.

78. Mercedes Benz tested an AMF device and found it unsatisfactory for use on its vehicles.

79. Other companies, including Toyota, Volvo, and Rover, also tested AMF devices.

80. No vehicle manufacturer, foreign or domestic, ever purchased any AMF device. Alternative systems of control, including air injection and engine modifications, were used instead.

### VII.

#### THE FOUR-YEAR PERIOD OF LIMITATION

81. The instant suit was not filed until October 1970.

82. Each manufacturer defendant reached its decision to use an approach other than the AMF device during 1964.

83. AMF was informed of each such decision during 1964.

84. As a result of these rejections, and as a result of a November 1964 refusal by the California Board to certify a second device for used cars, AMF decided to minimize its afterburner program. Only a skeleton staff was kept on by AMF after December 1964. The AMF afterburner program was put on a "close-out" basis in December 1964, and most of the people who had worked on that project were terminated that same month.

85. By the end of 1964, AMF had the conviction that no orders for AMF's smog burner would emanate from any Detroit automobile manufacturer.

86. By the end of 1964, Harold Lipchik, AMF Vice President and General Manager of the AMF Western Division and the afterburner project, had concluded that there was a conspiracy among vehicle manufacturers to boycott AMF.

87. The rejections by defendants in 1964 resulted in immediate loss in the market value of AMF's afterburner business, loss of AMF's prior investment, and loss of AMF's potential business on 1966 models.

88. By the end of 1964, AMF could predicte [sic] with precision the size of the 1966 vehicle market in California.

89. AMF has shown no valid reason for its failure to file this lawsuit prior to October 1970, given the state of its knowledge as early as December 1964.

90. Under the theory of AMF's case, the rejections of the AMF device in 1964 were the "overt acts" that

resulted in adverse impact upon AMF. As a result of these acts, AMF laid off employees and otherwise wound-down its afterburner business at the end of that year.

91. Subsequent to 1964, AMF's ability to prove with requisite certainty the existence and amount of its alleged damages became more rather than less speculative.

## VIII.

### DESTRUCTION OF DOCUMENTS

92. At the end of 1964, many documents relating to the AMF afterburner and various forms of prototype AMF afterburner hardware were in AMF's possession at AMF facilities in Los Angeles. Additional afterburner documents were in AMF's possession at AMF facilities in Springdale, Connecticut.

93. AMF never issued any instructions to any employees to retain any of these documents and hardware.

94. Many of these documents and hardware were turned over to Chromalloy by AMF in May of 1966 and subsequently destroyed in about 1970.

95. Other documents relating to the AMF afterburner were shipped by AMF to its facilities in York, Pennsylvania, sometime in 1966 where they were subsequently destroyed by AMF.

96. The delivery and destruction of these materials and hardware occurred subsequent to the time when Mr. Lipchik, AMF Vice President and General Manager of the AMF Western Division and the afterburner project, as well as others in AMF top management, came to believe that AMF had been the victim of a conspiracy to boycott.

97. This delivery and destruction occurred subsequent to the publication of articles in various national newspapers—articles known to AMF—containing reports of allegations and investigations relating to vehicle manufacturers' work on emission controls.

98. AMF did not issue any orders with respect to retention of afterburner documents even after receiving a 1966 subpoena from the Los Angeles Federal grand jury investigating the subject of vehicle emissions.

99. Only a half-drawer of documents was turned over to the grand jury by AMF.

100. AMF did not make any effort after receipt of the subpoena to retrieve or have preserved any of the documents or prototype units it had given away. These documents and prototype units were subsequently destroyed.

101. AMF witnesses have repeatedly testified that the destruction of these documents has impaired the accuracy and completeness of their testimony.

102. One example illustrates the gravity of this situation. In the instant case, AMF contends that it eventually developed a small production burner, radically different from the certified device, capable of meeting the California standards on defendants' vehicles. There are no hardware and no test data records to support this claim.

103. Although two AMF employees testified that tests of such a production device were successfully conducted, the senior AMF engineer on the afterburner project testified that the last versions of the small production device submitted to Detroit performed poorly. Mr. Morris also wrote in August 1965 that "to have a



smog burner exhaust device which is thoroughly proven will take more than one year."

104. The best evidence of whether a small production device was developed that would have met the standards are the original test data records.

105. Under the circumstances, AMF's disposal of these records creates a presumption that their contents would be unfavorable to AMF—that is, that the contents would show that the device would not have met the standards.

106. AMF's disposal of these records with knowledge of the existence of its cause of action also requires the exclusion of all secondary AMF testimony to the effect that the device, if it ever existed, did in fact meet the California standards.

## IX.

### THE MONOPOLY CLAIM AGAINST GENERAL MOTORS

107. Each vehicle manufacturer used its own system in meeting California emission standards.

108. In its opposition to the summary judgment motion, AMF makes clear with regard to its monopoly claim against General Motors that what it is complaining about is the sale by General Motors to Ford and American Motors of "air pumps for air injection purposes." This is the claimed relevant market.

109. AMF does not manufacture, nor has it ever manufactured or offered to sell, air pumps. AMF does not compete in the air pump market.

110. AMF is not in the target area of the claimed monopolization.

111. There were and are a number of sources of air pumps for air injection purposes other than General Motors.

112. General Motors did not have a monopoly of air pumps nor of air pumps for air injection purposes.

113. General Motors succeeded in selling air pumps to Ford and American Motors because of the technical quality of the General Motors air pump.

114. There is no evidence of any illegal activity relating to the sale of air pumps by General Motors.

115. AMF asserts that Ford executed three year requirements contracts for their pump needs.

116. Such contracts are common in the motor vehicle industry.

117. Such contracts are reasonable, particularly in light of the need for General Motors to build a new plant in order to produce the pump in sufficient capacity.

118. Ford tested air pump designs from four suppliers in addition to General Motors. Ford also had under development two different designs of pumps that Ford might manufacture. The Ford pumps could not be ready in time for the 1966 model year. As a result of testing of the other pumps, Ford concluded that the General Motors pump was the most satisfactory.

119. General Motors assisted Ford in developing the capacity for Ford to manufacture its own air pumps.

120. General Motors licensed Bendix, Holley, Mitsubishi, and Toyota to use the General Motors air pump design.

121. General Motors' contracts to sell air pumps to Ford and American Motors posed no barrier to AMF.



122. To the extent that Ford and American Motors turned to technology that did not require the use of air pumps, they did not need to purchase pumps from General Motors.

123. General Motors' sales of pumps declined in 1968 as Ford and American Motors turned to engine modification systems that did not require the use of air pumps.

## X.

### CONSUMER DEMAND

124. An individual motorist is not adversely affected by the emissions from his own vehicle alone—that is, whether or not he uses control devices on his single individual vehicle makes no detectable difference in overall air quality.

125. As a result, a typical vehicle purchaser does not consider emission controls, in contrast to such items as stereo radios and air conditioners, to be of value to him, and he is not willing to purchase them unless compelled by law to do so.

126. Accordingly, there is no consumer demand for vehicle emission controls.

127. Because of this absence of consumer demand, decisions as to what emission controls motorists are to be required to buy involve legislative and regulatory decisions rather than marketplace judgments.

128. Absent legislation requiring installation of emission controls, there was no incentive for a vehicle manufacturer to install emission control devices. The manufacturer who did so would be at a cost disadvantage relative to the manufacturer who did not.

## XI.

### SEPARATE FINDINGS RELATING TO CHRYSLER CORPORATION

129. At the time AMF first brought its approach to Chrysler, in May of 1964, Chrysler had become convinced that the best approach to vehicle emission control was engine modification. Emission control by engine modification involves changes in the vehicle's carburetor, distributor, cylinder design and other engine components, all of which are designed to control emissions within the engine rather than burning them somewhere downstream in the exhaust system, as did the AMF approach. The following events led to that conviction.

a. Prior to AMF's even acquiring rights to the device it sought to develop, Chrysler Corporation, for a number of years, had had an active program aimed at solving the automobile emissions problem. That program was conducted in part on a Chrysler-only basis and in part by Chrysler's participation in various committee activities with members of the AMA, pursuant to a Cross License Agreement, the Coordinating Research Council ("CRC"), a group consisting of automobile and oil company representatives and representatives of the Federal Government, and in cooperation with various governmental agencies including the Los Angeles Air Pollution Control District ("APCD"), the State of California and Federal groups, as well as with professional and nonprofit associations concerned with the emissions and air pollution problem. Chrysler viewed such cooperation as the most expeditious means of coming up with a solution to the emission problem.

b. As a principal part of this work, Chrysler led in the work of the CRC committee which conducted the Los Angeles Riverbed Survey in 1956. This survey gave a picture of characteristic emissions—under different operating conditions. This was supplemented *inter alia*, when, in 1958, in Cincinnati, Chrysler conducted, in cooperation with the United States Public Health Service, an emissions survey on some 200 vehicles, which survey was carried on wholly independently of Chrysler's AMA activities.

c. In the late 1950's, Chrysler's studies of this and other data led to close study of engine modification and maintenance as a method of emission control.

d. Chrysler's first publication concerning this method of control was at the January, 1959, Society of Automotive Engineers ("SAE") meeting. That paper concluded that substantial reductions could be obtained by proper maintenance and modification. Soon after that publication, in February of 1959, Chrysler told of its findings to a joint session of the California Legislature. Chrysler continued to actively pursue this approach during 1960 through 1962, and thereafter, while at the same time keeping California officials and others informed of its work.

e. In March of 1962, Chrysler again published a paper at the SAE on its engine modification approach. By that time it was possible to and Chrysler did make 100 engine modification kits, known as Cleaner Air Package ("CAP") kits, available to both private and governmental laboratories for testing and evaluation of this approach.

f. Chrysler's next step in moving toward installation of CAP was to run a 1,000 car production test of

cars modified to use the principles of CAP. This test was announced in November of 1962 and began the next Spring. The purpose and effect of Chrysler's production test was to see how CAP would perform in the hands of the public and to see what type of driveability problems arose in the field.

g. This approach also received extensive further testing on Los Angeles County cars. In late 1963 the County of Los Angeles adopted an emissions specification of its own, of 300 parts per million ("ppm") HC and 1.5 percent CO, to be applied in the purchase of County vehicles. Chrysler was the first, and for a period of time the only, automobile company to bid on these vehicles and to sell cars in accordance with the Los Angeles standard. These fleet sales by Chrysler continued during 1964 and 1965. The performance of these cars was continuously evaluated.

h. Chrysler applied for Motor Vehicle Pollution Control Board ("MVPCCB") certification of CAP in July of 1963. Such certification was necessary to sell cars equipped with CAP in California. All this was long before AMF came to Chrysler. The State certification process Chrysler went through was an extremely rigorous one and as such Chrysler did not receive certification for some 16 months. Chrysler received certification for CAP in November of 1964 and proceeded to install CAP on its 1966 California models.

i. Chrysler's decision to install CAP on its 1966 and subsequent model year vehicles sold in California and nationwide was made totally independently by Chrysler and was based on Chrysler's conclusion that CAP was the most efficient and least costly way of meeting the various emission standards promulgated

by the State of California and subsequently by the Federal Government.

130. Whereas Chrysler had great experience with CAP, AMF gave it no satisfactory opportunity to test its device and Chrysler could not prudently have used it. The facts in this regard are as follows:

a. At the time of AMF's presentation of its device to the automobile manufacturers in Detroit on May 19, 1964, no arrangements were made to deliver a device to Chrysler for testing because, as Chrysler advised AMF, it was heavily involved in its CAP efforts.

b. Once the AMF device was certified, Chrysler requested and, in July of 1964, received an AMF device for testing. The AMF device supplied, however, was not what AMF proposed to offer as a production device but rather was that version of its device which had been certified.

c. Chrysler repeatedly requested from AMF information as to when a production device would be available for Chrysler's testing but never received such a device in response to these requests.

d. In response to Chrysler's request for price information, AMF informed Chrysler that firm pricing data was not available but gave an estimated cost for the device and auxiliary parts of \$26.75. Additional pricing information was never supplied to Chrysler although AMF had indicated such information would be forthcoming.

e. At AMF's request, Chrysler's testing of the AMF prototype device was terminated in November of 1964 and the device was returned to AMF.

f. Upon returning that device to AMF, Chrysler again requested a production device for testing and was informed at that time that AMF's present forecast was that such devices would not be available until the Spring of 1965.

g. AMF never afforded Chrysler an opportunity to evaluate its supposed production device.

h. Such testing as Chrysler was able to complete indicated that it was not satisfactory for use on Chrysler's cars.

i. Chrysler's conclusion that CAP was a more efficient means of meeting emissions standards than that presented by AMF was based on the extensive research and development it had performed on CAP and the obvious need for additional development work on the AMF device it was given to evaluate before that device could be produced and installed on vehicles. In addition, that evaluation performed by Chrysler on the AMF device it was given to test showed the device created both fuel consumption and back pressure problems.

j. Chrysler also concluded that CAP was by far less costly to install. That conclusion was based on the fact that the only price information supplied it by AMF put the cost of the AMF hardware alone, uninstalled, at \$26.75, while the cost to Chrysler of CAP as installed on its 1966 model year vehicles ranged from \$6.04 to \$21.17, this latter cost being for its highest priced vehicle, with most costs falling between the \$6.00 to \$12.00 range.

131. Chrysler's decision to use CAP in preference to the concept being advocated by AMF had nothing to do with the fact that other automobile companies rejected



the AMF concept. There was no agreement, conspiracy or concert of action between Chrysler and any other company concerning the use of third party devices or concerning AMF's device.

a. Chrysler's approach was not the same as that of other companies. The CAP approach used by Chrysler in meeting the 1966 California standards was different from the air injection approach used by all other defendants that year and Chrysler's advocacy of the merits of this approach was and had been a substantial matter of dispute within the automobile industry.

b. The dispute over the merits of the engine modification approach to emission control began with Chrysler's first publication on this approach, in 1959, and continued even after CAP's certification. This dispute manifested itself in various ways including statements by other defendants to California officials, during CAP's certification testing, that CAP would not work and at least one attempt, after CAP's certification, to, in effect, have it legislatively de-certified. That attempt was unsuccessful.

c. Chrysler's work with and sales to Los Angeles County were a matter of dispute within the automobile industry but, nevertheless, Chrysler continued to make sales.

d. Chrysler's certification application met with substantial opposition from various members of the MVPCB, its Staff, and from Donald Jensen, its Executive Director. But Chrysler persisted.

e. The fact that the validity of the engine modification approach, as advocated by Chrysler, was a matter of dispute within the automobile industry in no way served to deter Chrysler's efforts on that approach. Chrysler proceeded with complete independence.

f. Chrysler at no time agreed with any other defendant herein, or anyone else, that it would not cooperate with suppliers or potential suppliers in the development and installation of emission control equipment.

g. Long prior to AMF's acquiring the rights to the Smog Burner device Chrysler had begun an active cooperative research program with Thompson-Ramo-Wooldridge ("TRW") on various configurations of direct flame afterburners.

h. Chrysler and TRW freely exchanged information as part of this program and jointly published a leading technical paper in March of 1962 on their developments.

i. TRW eventually ceased working in this area upon concluding that the afterburner was not the proper way to go in resolving the emissions problem.

j. In addition to this work with TRW, Chrysler conducted extensive flame afterburner work on its own and in cooperation with others than TRW, and worked with various chemical and muffler companies on catalytic converters. Chrysler eventually rejected the catalytic approach due primarily to lead poisoning and thermal problems it encountered.

k. Chrysler followed this same practice of cooperating and working closely with suppliers in its CAP development work. Chrysler viewed such cooperative work as essential to its program in that many of the key components of CAP, particularly the carburetor and the deceleration valve, were purchased from outside suppliers.

l. Chrysler at no time agreed with any other defendant herein or anyone else as to what to install,



or not to install, on its vehicles or when such installations would be made.

m. At no time did Chrysler agree with anyone to hold back any form of emission control or to take any step which was intended to or had the effect of delaying any form of emission control.

132. The only additional part added to Chrysler's CAP cars for emission control purposes was a valve designed to advance distributor spark timing during vehicle deceleration. All remaining emission reductions with CAP were accomplished through modifications in already existing engine components. Most of these key components were purchased from outside suppliers, including the carburetor and the above described deceleration valve. AMF's competitors as to Chrysler's business were the suppliers of such equipment rather than Chrysler. Chrysler was not in competition with AMF in the market of vehicle emission controls.

## XII.

### CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties and the subject matter.

2. Venue is proper in this court.

3. To the extent that any of the foregoing findings are conclusions of law, they are incorporated herein. To the extent that any of the following conclusions are findings of fact, they are incorporated therein.

4. The cross-licensing agreement did not violate the antitrust laws.

5. Defendants' cooperative program relating to emission controls and activities conducted pursuant thereto did not violate the antitrust laws.

6. The presentation and advocacy of industry viewpoints before legislative and regulatory authorities did not violate the antitrust laws and was constitutionally protected.

7. Defendants' rejections of AMF did not violate the antitrust laws.

8. Defendants were entitled to reject AMF for business reasons sufficient to each.

9. Defendants were under no obligation to cooperate with AMF in perfecting the AMF concept.

10. AMF cannot prove that it was foreclosed from any market by any act of defendants unlawful under the antitrust laws.

11. AMF did not meet the condition precedent to entry into the marketplace, namely certification of a production device by the State of California. The experimental prototype was also decertified.

12. AMF was not an actual or potential entrant to this market because it failed to satisfy the essential conditions precedent to entry.

13. AMF never had a device to be the subject of any boycott.

14. It would be error to permit any jury to speculate that even if AMF had developed a production device the California Board would have certified it.

15. [Defendants' proposed finding deleted by the Court.]

16. AMF cannot prove that any AMF device would have been used under any circumstances.

17. Even if AMF had some evidence of illegal acts directed toward outsiders, it still would not be entitled

to recover because it can not prove any impact upon itself or any damages.

18. AMF is barred by the statute of limitations.

19. AMF's destruction of and failure to preserve documents and hardware with knowledge of the existence of its cause of action creates a presumption that their contents would be unfavorable to AMF—that is, that the contents would show that no AMF production device would have met the California standards—and requires the exclusion of all secondary AMF testimony to the effect that the device, if it ever existed, did in fact meet the California standards.

20. [Defendants' proposed finding deleted by the Court.]

21. With regard to the monopolization claim against General Motors:

(1) AMF was not in the target area of the claimed monopolization;

(2) General Motors has no monopoly in the claimed market;

(3) AMF has no evidence of any illegal acts by General Motors; and

(4) Sales by General Motors in the claimed market had no impact upon AMF.

22. Defendants did not conspire to boycott, attempt or conspire to monopolize, or monopolize any market related to motor vehicle emission control devices.

23. AMF was not injured by, nor can it prove any damages as a result of, any unlawful acts of defendants.

24. There is no disputed issue of material fact to prevent the entry of judgment for defendants.

25. The issues which plaintiff attempts to raise on this motion are irrelevant.

26. Defendants are entitled to judgment as a matter of law.

DATED: 2/18/76, 1976.

/s/ Manuel L. Real  
Judge

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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

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M.D.L. Docket No. 31  
Civil No. 71-16-R

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[Filed: Feb. 18, 1976]

IN RE:  
MULTIDISTRICT VEHICLE AIR POLLUTION

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AMF INCORPORATED,  
*Plaintiff,*

*v.*

GENERAL MOTORS CORPORATION, *et al.*,  
*Defendants.*

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SUMMARY JUDGMENT

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The motions of all defendants for summary judgment came on for hearing before the Court on January 19, 1976, the Honorable Manuel L. Real, District Judge, presiding. The Court considered the pleadings, said motions, the papers filed in support thereof, the other papers on file herein, and the arguments of counsel. It appearing that there is no genuine issue as to any material fact, and that said defendants are entitled to judgment on the Complaint as a matter of law,

IT IS HEREBY ORDERED AND ADJUDGED:

1. That in accordance with the findings of fact and conclusions of law made herein, judgment be entered in favor of each of said defendants against plaintiff on the Complaint herein and that plaintiff take nothing on said Complaint from said defendants;

2. Said defendants and each of them shall have and recover from plaintiff their costs incurred herein.

DATED: February 18, 1976.

/s/ Manuel L. Real  
Judge

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